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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91216951
Party	Plaintiff Threshold Enterprises Ltd.
Correspondence Address	ROD S BERMAN JEFFER MANGELS BUTLER & MITCHELL LLP 1900 AVENUE OF THE STARS, 7TH FLOOR LOS ANGELES, CA 90067-5010 UNITED STATES trademarkdocket@jmbm.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Jessica Bromall Sparkman
Filer's e-mail	trademarkdocket@jmbm.com
Signature	/jessica bromall sparkman/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THRESHOLD ENTERPRISES LTD., Opposer, v. GLANBIA INGREDIENTS (BALLYRAGGET) LIMITED, Applicant.	Opposition No.: 91216951 Application Serial Nos.: 85/685,585, 85/685,603 Marks: OPEN SOURCE  Published for Opposition: April 22, 2014 Atty. Ref. No.: 72293-9002
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

THRESHOLD'S MOTION TO SUSPEND PROCEEDINGS
PENDING RESOLUTION OF DISTRICT COURT ACTION

Opposer Threshold Enterprises Ltd. (“Threshold”) moves the Board to immediately issue an order suspending all further proceedings in this opposition pending the resolution of United States District Court for the Central District of California Case No. 2:16-cv-01241, entitled *Threshold Enterprises Ltd. v. Glanbia plc, et al.* (the “Civil Action”). A copy of the complaint in the Civil Action for is attached hereto as Exhibit 1 (the “Complaint”).

In the Civil Action, Threshold alleges a number causes of action against applicant herein, Glanbia Ingredients (Ballyragget) Limited (“GI”) based on GI’s use of the marks that are the subject of this opposition (the “OPEN SOURCE Marks”), including state and federal trademark infringement and unfair competition. *See* Complaint. Thus, the Civil Action involves the same parties as the instant opposition, and involves issues that are identical, or nearly identical to those

to be decided in the instant opposition, namely whether a likelihood of confusion exists between Threshold's SOURCE NATURALS trademark and GI's OPEN SOURCE Marks.¹

Where, as here, parties to an opposition "are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding." 37 C.F.R. § 2.117(a). Here, as in most cases, the District Court's decision in the Civil Action would be binding on the Board, but Board's decision in this opposition would not be binding on the District Court. For this reason, not only is it permissible for the Board to suspend proceedings when the same issues are pending before a district court, but it is its ordinary practice. T.B.M.P. §510.02(a) ("Unless there are unusual circumstances, the Board will suspend proceedings in the case before it if the final determination of the other proceeding may have a bearing on the issues before the Board.").

The outcome of the Civil Action will clearly have a direct bearing on this opposition. Moreover, it is particularly appropriate for the Board to suspend proceedings here, as the case is still in its early stages; discovery has not yet been completed, depositions have not yet been taken, expert disclosures have not yet been served, neither party has presented testimony or other evidence, and neither party has yet filed any dispositive motions. If the instant opposition is not stayed, it will result in duplication of effort for the parties, including in discovery, depositions, and briefing, as well as a waste of judicial resources for the Board, all in pursuit of a decision that could ultimately be overturned by a contrary decision from the District Court in the Civil Action.

¹ The Complaint was filed on February 23, 2016. On February 25, 2016, Threshold sent a copy of the Complaint to GI, and asked it to consent to a suspension of this proceeding. GI did not respond. On March 1, 2016, Threshold made a second request that GI consent to suspension. Again, GI did not respond.

Accordingly, for all the reasons stated herein, and because the outcome of the Civil Action will clearly have a direct bearing on this opposition, Threshold moves the Board to immediately issue an order suspending proceedings in this opposition.

Dated: March 2, 2016

/s/ JESSICA BROMALL SPARKMAN

Rod S. Berman, Esq.

Jessica Bromall Sparkman, Esq.

Attorney for Opposer Threshold Enterprises, Ltd.

Jeffer Mangels Butler & Mitchell LLP

1900 Avenue of the Stars, Seventh Floor

Los Angeles, CA 90067-5010

Telephone: (310) 203-8080

Fax: (310) 203-0567

E-mail: trademarkdocket@jmbm.com

Exhibit 1

JEFFER MANGELS BUTLER & MITCHELL LLP
ROD S. BERMAN (Bar No. 105444), rberman@jmbm.com
JESSICA BROMALL SPARKMAN (Bar No. 235017), jzb@jmbm.com
NATHANIEL DANG (Bar No. 296757), ndang@jmbm.com
1900 Avenue of the Stars, Seventh Floor
Los Angeles, California 90067-4308
Telephone: (310) 203-8080
Facsimile: (310) 203-0567

Attorneys for Plaintiff THRESHOLD ENTERPRISES,
LTD.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

THRESHOLD ENTERPRISES, LTD., a
Delaware corporation,

Plaintiff,

v.

GLANBIA PLC, an Ireland public
limited company; GLANBIA
INGREDIENTS (BALLYRAGGET)
LTD., an Ireland limited liability
company; GLANBIA NUTRITIONALS
(IRELAND) LTD., an Ireland limited
corporation; GLANBIA
PERFORMANCE NUTRITION, INC., a
Florida corporation; and DOES 1
through 10, inclusive.

Defendants.

CASE NO.

COMPLAINT FOR:

- (1) **TRADEMARK
INFRINGEMENT (15 U.S.C.
§ 1114);**
- (2) **FALSE DESIGNATION OF
ORIGIN AND UNFAIR
COMPETITION (15 U.S.C.
§ 1125(a));**
- (3) **CYBERPIRACY (15 U.S.C.
§ 1125(d);**
- (4) **COMMON LAW
TRADEMARK
INFRINGEMENT;**
- (5) **COMMON LAW INJURY TO
BUSINESS REPUTATION;**
- (6) **UNJUST ENRICHMENT; AND**
- (7) **UNFAIR BUSINESS
PRACTICES (CAL. BUS. &
PROF. CODE § 17200).**

DEMAND FOR TRIAL BY JURY

1 For its complaint, plaintiff Threshold Enterprises, Ltd. (“Plaintiff” or
2 “Threshold”) alleges as follows:

3 **THE PARTIES**

4 1. Plaintiff is a Delaware corporation with its principal place of business at
5 23 Janis Way, Scotts Valley, California 95066. Using the SOURCE and SOURCE
6 NATURALS trademarks and brands, Plaintiff manufactures and sells a variety of
7 high quality vitamins and dietary supplements. Plaintiff distributes its products
8 throughout the United States and does substantial business in the Central District of
9 California.

10 2. Defendant Glanbia plc (“GP”) is an Ireland public limited company with
11 offices at Glanbia House, Kilkenny, Ireland.

12 3. Defendant Glanbia Ingredients (Ballyragget) Limited, also known as
13 Glanbia Ingredients Ireland (“GII”), is an Ireland limited liability company with
14 offices at Glanbia House, Kilkenny, Ireland. On information and belief GII is a joint
15 venture of Glanbia Co-Op and GP.

16 4. Defendant Glanbia Nutritionals (Ireland) Limited (“GNIL”) is an Ireland
17 limited corporation with offices at Glanbia House, Kilkenny, Ireland. On information
18 and belief, GNIL is a subsidiary of GP.

19 5. Defendant Glanbia Performance Nutrition, Inc. (“GPN”) is a Florida
20 corporation. On information and belief GPN operates and does business in
21 California. On information and belief, GNIL is a subsidiary of GP.

22 6. Plaintiff is informed, and believes, and based thereon alleges, that at all
23 times relevant to this action, GII has had continuous and systematic contacts with the
24 state of California and this judicial district, including using, or preparing to use, the
25 OPEN SOURCE and OPEN SOURCE & Design trademarks and infringing
26 Plaintiffs’ rights in its SOURCE and SOURCE NATURALS marks in this judicial
27 district.
28

1 7. Plaintiff is informed, and believes, and based thereon alleges, that at all
2 times relevant to this action, GNIL and GNP have had continuous and systematic
3 contacts with the state of California and this judicial district, including using the TRU
4 SOURCE, TRUSOURCE, TRUSOURCE & Design, and TRUSOURCE
5 SIMPLE.FITNESS.SOLUTIONS. & Design trademarks, and infringing Plaintiff's
6 rights in its SOURCE and SOURCE NATURALS marks in this judicial district.

7 8. Plaintiff is informed, and believes, and based thereon alleges, that at all
8 times relevant to this action, GP has had continues and systematic contacts with the
9 state of California and this judicial distribution, including by directing and controlling
10 the actions of GII, GNIL, and GP that occurred or had effects in California.

11 9. Plaintiff is unaware of the true names and capacities, whether individual,
12 corporate, associate, or otherwise, of defendants Does 1 through 10, inclusive, or any
13 of them, and therefore sues these defendants, and each of them, by such fictitious
14 names. Plaintiff will seek leave of Court to amend this Complaint when the identity
15 of one or more of these defendants is ascertained. Does 1 through 10, inclusive, GP,
16 GII, GPN, and GNIL are referred to herein collectively as "Defendants," and
17 individually as "a Defendant."

18 10. Plaintiff is informed and believe, and on that basis alleges, that each
19 Defendant conspired and acted in concert with each other to commit the wrongs
20 against Plaintiff alleged herein, and in doing so were at all relevant times the agents,
21 servants, employees, principals, joint venturers, alter egos, and/or partners of each
22 other. Plaintiff is further informed and believes, and on that basis alleges, that in
23 doing the things alleged in this Complaint, each Defendant was acting within the
24 scope of authority conferred upon that Defendant by the consent, approval, and/or
25 ratification of the other Defendants, whether said authority was actual or apparent.

26 **JURISDICTION AND VENUE**

27 11. This Court has jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C.
28 §§ 1331 and 1338(a) over the federal trademark infringement and unfair competition

1 claims, which arise under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, and has
 2 jurisdiction pursuant to 28 U.S.C. §§ 1338(b) and 1367 over the state unfair
 3 competition and common law trademark infringement claims. This Court also has
 4 jurisdiction pursuant to 28 U.S.C. § 1332 over all claims asserted herein.

5 12. This Court has personal jurisdiction over Defendants because, on
 6 information and belief, Defendants have each transacted business in this judicial
 7 district during the times relevant to this action. Furthermore, Defendants' infringing
 8 conduct is purposefully directed at Plaintiff, and has caused harm to Plaintiff in this
 9 judicial district. Moreover, Defendants have purposefully availed themselves of the
 10 privilege of conducting business in California. Thus, the exercise of jurisdiction is
 11 fair and reasonable.

12 13. Venue is proper under 28 U.S.C. § 1391(b)-(d). A substantial part of the
 13 events and/or omissions giving rise to the claims against Defendants, including the
 14 sale of infringing products, and the damages resulting therefrom, occurred in this
 15 judicial district.

16 **GENERAL ALLEGATIONS**

17 **Plaintiff Has Strong Rights in SOURCE and SOURCE NATURALS**

18 14. For more than 35 years, Plaintiff has manufactured vitamins and
 19 nutritional supplements. Plaintiff's products are distributed to several thousand
 20 retailers, as well as several thousand doctors and health professionals, both in the
 21 United States and abroad.

22 15. For more than 30 years, Plaintiff, and its predecessor in interest, have
 23 continuously used the trademarks SOURCE and SOURCE NATURALS, and the
 24 trade name SOURCE NATURALS, INC., for vitamins and nutritional supplements
 25 (the "SOURCE" or the "SOURCE Marks"). For more than 13 years, Plaintiff has
 26 used the SOURCE Marks for its cosmetic and skin care products. Consumers,
 27 distributors, and retailers routinely refer to SOURCE NATURALS, INC. as
 28 SOURCE, and SOURCE NATURALS-branded products, as SOURCE products.

1 16. Plaintiff offers more than 600 vitamin and nutritional supplement
2 products under its SOURCE Marks. Plaintiff's SOURCE-branded products are
3 available in all major U.S. markets and in many well-known national retailers,
4 including grocery stores Whole Foods and Sprouts, as well as in GNC and Vitamin
5 Shoppe stores. Plaintiff's SOURCE-branded products are also available online
6 through well-known websites such as VitaCost.com, vitaminshoppe.com, and
7 iherb.com.

8 17. Many of Plaintiff's SOURCE-branded products have been recognized
9 for their quality and excellence. One of Plaintiff's first SOURCE products was its
10 Wellness Formula®, whose introduction established the immune support supplement
11 category. Thirty years later, this product is still winning accolades, winning for Best
12 Immune Support Formula at the 2015 Vity Awards. Additionally, Plaintiff's sleep
13 aid Melatonin won the 2015 Vity Award for Best Natural Sleep Remedy. Plaintiff
14 also offers many other award-winning products under the SOURCE Marks, including
15 "Life Force® Multiple, Mega-Kid Multiple™, Inflama-Rest™, the Skin Eternal™
16 line, Higher Mind™, Essential Enzymes™, and Male Response™.

17 18. Since 2006, Plaintiff has used the trademark TRUE WHEY in
18 connection with a protein powder supplement product offered under the SOURCE
19 Marks.

20 19. Since 2014, Plaintiff has used the trademark VEGAN TRUE to identify
21 a line of vegan vitamins and supplements offered under the SOURCE Marks.

22 20. Plaintiff is the owner of incontestable U.S. Trademark Registration No.
23 1,909,705 for SOURCE NATURALS for "vitamins, herbs and nutritional
24 supplements." This registration is conclusive evidence of Plaintiff's exclusive right
25 to use SOURCE NATURALS in commerce in connection with the goods specified in
26 the registration.

27 21. Plaintiff is the owner of U.S. Trademark Registration No. 3,930,397 for
28 SOURCE NATURALS for "cosmetics, namely, ointments, gels, creams, lotions,

1 moisturizers, oils, serums, salves and bath oils, all of which are used for the skin.”
 2 This registration is evidence of Plaintiff’s exclusive right to use SOURCE in
 3 commerce in connection with the goods specified in the registration.

4 22. Plaintiff is the owner of U.S. Trademark Registration No. 4,837,774 for
 5 SOURCE for “dietary supplements; herbal supplements; nutritional supplements;
 6 food supplements; vitamins,” and “wholesale distributorship and mail order catalog
 7 services in the field of dietary, herbal, nutritional, and food supplements and
 8 vitamins.” This registration is evidence of Plaintiff’s exclusive right to use SOURCE
 9 in commerce in connection with the goods specified in the registration.

10 23. Plaintiff is the owner of U.S. Trademark Registration No. 4,835,622 for
 11 VEGAN TRUE for “vegan dietary supplements; vegan herbal supplements; vegan
 12 nutritional supplements; vegan food supplements; vegan vitamins.” This registration
 13 is evidence of Plaintiff’s exclusive right to use VEGAN TRUE in commerce in
 14 connection with the goods specified in the registration.

15 24. Through Plaintiff’s hard work, attention to detail, relentless commitment
 16 to quality, and the investment of substantial time, effort, and money in both
 17 advertising and research and development, Plaintiff, as well its SOURCE-branded
 18 products, have achieved a national reputation for quality, reliability, and
 19 effectiveness.

20 25. Plaintiff’s SOURCE Marks are both conceptually and commercially
 21 strong. Plaintiff has used the marks for more than 30 years, and on more than 600
 22 vitamin and nutritional supplement products. Since adopting the SOURCE Marks,
 23 Plaintiff has invested millions of dollars in advertising, and had over a billion dollars
 24 in sales.

25 Defendants Are Infringing Plaintiff’s Rights

26 26. Defendant GII is an Irish dairy company. GII exports ingredients for use
 27 in various products, including nutritional supplements, to more than 60 countries,
 28 including the United States. GII has offices located in Wisconsin.

27. In or around 2012, GII applied to register the marks OPEN SOURCE and OPEN SOURCE & Design, U.S. Trademark Application Nos. 85/685,585 and 85/685,603, in connection with various goods and services, including whey protein and dietary supplements (the “OPEN SOURCE Marks”).

28. On information and belief, sometime after 2012, GII began using, or has imminent plans to begin using, the OPEN SOURCE Marks for protein supplements and dietary supplements, and as a mark appearing on numerous consumer products, including, without limitation, dietary and nutritional supplements, signifying that the products complied with certain standards of farming, transportation, and production established by GII.

29. Defendants GNIL and GNP manufacture and sell nutritional products. In 2015 GNIL and GNP adopted, are now using, and GNIL has applied to register, the marks TRU SOURCE, TRUSOURCE, TRUSOURCE & Design, and TRUSOURCE SIMPLE.FITNESS.SOLUTIONS, U.S. Trademark Application Nos. 86/565,379, 86/565,384, 86/639,547 and 86/639,563, for goods including dietary and nutritional supplements (the “TRU SOURCE Marks”).

30. One of the products offered under the TRU SOURCE Marks is a protein powder supplement, the identical type of product offered by Plaintiff in its TRUE WHEY line of SOURCE-branded products.

31. GNIL’s and GNP’s TRUE SOURCE-branded products are sold and distributed through Kroger’s national network of supermarkets, and are advertised and promoted through the website located at www.mytrusource.com.

32. On information and belief, GP directs and controls the actions of GII, GNIL, and GNP.

Pending Actions in the TTAB

33. Plaintiff has initiated Proceeding No. 91/216,951 before the Trademark Trial and Appeal Board (“TTAB”) opposing GII’s applications to register the OPEN SOURCE Marks.

1 34. Plaintiff has initiated Proceeding Nos. 91/224,750 and 91/224,791 before
2 the TTAB opposing GNIL's applications to register the TRU SOURCE Marks.

3 35. Plaintiff anticipates that the above-referenced TTAB proceedings will be
4 suspended pending the disposition of this lawsuit.

5 36. In the pending TTAB proceedings, GNIL seeks cancellation of
6 Plaintiff's U.S. Trademark Registration No. 1,909,705 (the " '705 Reg.") on the
7 ground that it is deceptively misdescriptive under Section 2(e) of the Lanham Act.
8 The registered mark SOURCE NATURALS is not deceptively misdescriptive, and, in
9 any event, the '705 Reg. is more than five years old, and thus not subject to
10 cancellation on the grounds that it is deceptively misdescriptive under Section 2(e).
11 15 U.S.C. § 1064.

12 37. GNIL also seeks cancellation of Plaintiff's U.S. Trademark Registration
13 No. 4,837,774 (the " '774 Reg.") under Lanham Action Section 2(d) on the grounds
14 that the mark is confusingly similar to various third-party registrations. However,
15 GNIL cannot obtain cancellation by asserting third-party rights. *Otto Roth & Co.,*
16 *Inc. v. Universal Foods Corp.*, 640 F.2d 1317, 1320 (C.C.P.A. 1981). An essential
17 element of a claim under Section 2(d) is the pleading and proof that the claimant
18 owns valid prior rights in the allegedly confusingly trademark. *Id.*; *Herbko Int'l, Inc.*
19 *v. Kappa Books, Inc.*, 308 F.3d 1156, 1161-62 (Fed. Cir. 2002). Obviously, GNIL
20 cannot satisfy this element with respect to any of the third-party marks.

21 38. GNIL also seeks cancellation of the '774 Reg. on the ground that the
22 specimen submitted in connection with the application on which the '774 Reg. issued
23 "does not show [Plaintiff's] SOURCE mark in use in commerce." As noted above,
24 Plaintiff has used the SOURCE and SOURCE NATURALS and the SOURCE
25 NATURALS, INC. trade name for more than 30 years. Consumers – both end users
26 and retailers – refer to Plaintiff as SOURCE (not just as SOURCE NATURALS), and
27 refer to Plaintiff's products as SOURCE products (not as SOURCE NATURALS
28

1 products). The specimen, however, plainly shows Plaintiff's SOURCE mark, and
2 GNIL provides no further explanation of its allegations.

3 39. In responding to Plaintiff's opposition, GNIL alleged that Plaintiff
4 committed fraud in connection with the application on which the '774 Reg. issued by
5 stating, in its application, that it believed "that to the best of [its] knowledge and
6 belief, no other person has the right to use the mark in commerce, either in identical
7 form or in such near resemblance as to be likely, when used on or in connection with
8 the goods/services of such other person, to cause confusion or mistake or to deceive."
9 GNIL suggests that this statement is fraudulent because Plaintiff "had knowledge of"
10 third-party marks incorporating the term "source." Of course, having knowledge of
11 third-party marks incorporating "source" is quite different than knowing that a third-
12 party has a *right to use* a confusingly similar mark. Plaintiff's rights in its SOURCE
13 mark date back to at least as early as 1982. Plaintiff is unaware of any third-party
14 with prior rights in a confusingly similar mark, and GNIL has no evidence that any
15 such mark exists.

16 40. Finally, GNIL also suggested that the SOURCE Marks are weak due to a
17 "crowded field" of marks using the term SOURCE in the industry. In support of this
18 theory, however, GNIL provides no more than a list of third-party registrations. The
19 "significance of third-party marks depends wholly on their usage," including whether
20 the marks were "actually used by third parties" and "were well promoted" and
21 "recognized by consumers." *Zobmondo Entertainment, LLC v. Falls Media, LLC*,
22 602 F.3d 1108, 1119 (9th Cir. 2010). Registration certificates are not evidence of
23 third party, and, further, evidence of third party use "without contextual information
24 such as sales figures and distribution locations, falls short of establishing" a crowded
25 field. *Id.*

26 41. There is no evidence that the actual market place is crowded with well-
27 known marks incorporating SOURCE. Plaintiff polices its marks, and, when it
28

discovers a third-party *use* that it believes will result in consumer confusion, such as the usages being made by Defendants, it acts diligently to eliminate them.

FIRST CAUSE OF ACTION

Trademark Infringement – 15 U.S.C. § 1114

42. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as if set forth herein.

43. Defendants, through the acts and omissions described herein, have used, or are imminently about to use, in commerce a reproduction or imitation of Plaintiff's federally registered SOURCE and SOURCE NATURALS trademarks in connection with the sale of goods, without Plaintiff's consent.

44. Defendants' conduct is likely to cause confusion, to cause mistake, or to deceive consumers, retailers, and distributors. As a result of Defendants' conduct, confusion is likely to occur both when consumers are making their purchasing decisions, as well as post-sale.

45. GII's OPEN SOURCE Marks are used on, or will be used on, many consumer products sold in grocery stores, including the dietary and nutritional supplements. Plaintiff's SOURCE-branded products also include dietary and nutritional supplements, and are also available in grocery stores.

46. GNIL's TRU SOURCE Marks are used on dietary and nutritional supplements sold in Kroger grocery stores, specifically a protein powder and a protein drink. Plaintiff's SOURCE-branded products also include dietary and nutritional supplements, and specifically include a protein powder. Plaintiff's SOURCE-branded products are also sold in grocery stores. Here, the parties' products are sold through identical channels of trade – grocery stores.

47. Moreover, on information and belief, Kroger owns grocery store chain Fred Meyer and website vitacost.com. Plaintiff has sold its SOURCE products to Fred Meyer for more than twenty years, and vitacost.com is one of Plaintiff's largest customers.

48. That the parties' goods are not available in the same grocery stores – Plaintiff's SOURCE-branded products are in Whole Foods and Sprouts, while GNIL's infringing products are in Kroger stores – actually increases the likelihood of consumer confusion. A consumer may be familiar with Plaintiff's protein powder, *e.g.*, from the dietary and nutritional supplements section of a Whole Foods or Sprouts, and then look for Plaintiff's products in a Kroger store, and find only GNIL's infringing products. When it encountered GNIL's infringing product in Kroger, however, the consumer would have not opportunity to compare the parties' names and products side-by-side, increasing the likelihood that the consumer would be confused.

49. Further exacerbating the likelihood of consumer confusion is the fact that Defendants, both Glanbia-related entities, are using multiple marks incorporating "source", which is the dominant portion of Plaintiff's SOURCE Marks. Further, Plaintiff uses "true" as a component of two different marks, including the TRUE WHEY protein powder, which increases the likelihood that a consumer, familiar with Plaintiff's SOURCE-branded TRUE WHEY protein power, will mistakenly believe that there is some association between Plaintiff, and its products, and GNIL's TRU SOURCE protein powder.

50. Defendants' actions constitute trademark infringement pursuant to 15 U.S.C. § 1114.

51. Defendants are also liable for contributory trademark infringement, in that, with knowledge of a third party's infringing conduct, they induced, caused, and/or materially contributed to the infringing conduct.

52. Defendants have committed the acts alleged above with previous knowledge of Plaintiff's prior use of and superior rights to the SOURCE and SOURCE NATURALS marks. Further, Defendants' actions were for the willful and calculated purpose of trading upon Plaintiff's goodwill and for the willful and calculated purpose of misleading and deceiving purchasers and the public.

1 53. As a direct and proximate result of Defendants' conduct, Plaintiff has
2 been damaged and will continue to be damaged unless Defendants are enjoined.
3 Plaintiff is entitled to and seeks an injunctive relief.

4 54. Pursuant to 15 U.S.C. §§1117(a), as well as an order awarding all of its
5 damages caused by, and all of Defendants profits traceable to, Defendants conduct.

6 55. Defendants conduct alleged herein was intentional and without
7 foundation in law. Pursuant to 15 U.S.C. §1117(a), Plaintiff is entitled to and seeks
8 an award of treble damages against Defendants

9 56. Defendants acts make this an exceptional case under 15 U.S.C. §
10 1117(a), and Plaintiff is entitled to and seeks an award of attorneys' fees and costs.

11 **SECOND CAUSE OF ACTION**

12 False Designation of Origin and Unfair Competition – 15 U.S.C. § 1125(a)

13 57. Plaintiff incorporates by reference the preceding paragraphs of this
14 Complaint as if set forth herein.

15 58. Defendants conduct constitutes unfair competition pursuant to 15 U.S.C.
16 1125(a). By the acts and omissions described above, Defendants have used, or are
17 imminently about to use, in commerce words, terms, names, symbols, and devices
18 which are confusingly similar to those of Plaintiff, in a manner that is likely to cause
19 confusion or mistake or to deceive consumers as to the affiliation, connection, or
20 association of Defendants with Plaintiff, and/or as to the origin, sponsorship, or
21 approval of Defendants' goods, in violation of 15 U.S.C. § 1125(a).

22 59. As a result of Defendants' conduct, confusion is likely to occur both
23 when consumers are making their purchasing decisions, as well as post-sale.

24 60. Defendants use of the term "TruSource" implies that any other mark
25 including the term "source," the products marketed thereunder, and the owner
26 thereof, including Plaintiff's, its SOURCE Marks, and the products marketed
27 thereunder, are false, imitation, or otherwise not genuine. Similarly, Defendants use
28 of "Open Source" implies that any other mark including the term "source," the

1 products marketed thereunder, and the owner thereof, including Plaintiff, its
2 SOURCE Marks, and the products marketed thereunder, are close-minded,
3 standoffish, or dishonest.

4 61. Defendants are also liable for contributory infringement, in that, with
5 knowledge of a third party's infringing conduct, they induced, caused, and/or
6 materially contributed to the infringing conduct described above.

7 62. Defendants' actions are willful, malicious, fraudulent, deliberate, and
8 intended to confuse the public.

9 63. Plaintiff has suffered, and continues to suffer, damages to its profits,
10 sales, and business as a result of Defendants' acts of infringement. Plaintiff has
11 sustained, and will continue to sustain, great and irreparable injury in that it will lose
12 customers and good will.

13 64. As a direct and proximate result of Defendants' conduct, Plaintiff has
14 been damaged and will continue to be damaged unless Defendants are enjoined.
15 Plaintiff is entitled to and seeks an injunctive relief.

16 65. Pursuant to 15 U.S.C. §§1117(a), as well as an order awarding all of its
17 damages caused by, and all of Defendants profits traceable to, Defendants conduct.

18 66. Defendants conduct alleged herein was intentional and without
19 foundation in law. Pursuant to 15 U.S.C. §1117(a), Plaintiff is entitled to and seeks
20 an award of treble damages against Defendants

21 67. Defendants acts make this an exceptional case under 15 U.S.C. §
22 1117(a), and Plaintiff is entitled to and seeks an award of attorneys' fees and costs.

23 **THIRD CAUSE OF ACTION**

24 **Cyberpiracy – 15 U.S.C. 1125(d)**

25 68. Plaintiff incorporates by reference the preceding paragraphs of this
26 Complaint as if set forth herein.

69. Defendant GNIL, with a bad faith intent to profit from the SOURCE Marks, registered the domain name <mytrusource.com> (the “Domain Name”), which is confusingly similar to the SOURCE Marks.

70. The SOURCE Marks are distinctive, and were distinctive at the time GNIL registered the Domain Name.

71. As a direct and proximate result of GNIL’s conduct, Plaintiff has been damaged and will continue to be damaged. Pursuant to 15 U.S.C. §§1117(a) and 1117(d), Plaintiff is entitled to an order awarding all damages sustained by Plaintiff caused by GNIL’s conduct, or statutory damages in the amount of up to \$100,000.

72. GNIL’s conduct alleged herein was intentional and without foundation in law. Pursuant to 15 U.S.C. §1117(a), Plaintiff is entitled to an award of treble damages against GNIL.

73. GNIL’s acts make this an exceptional case under 15 U.S.C. § 1117(a), and Plaintiff is entitled to an award of attorneys’ fees and costs.

FOURTH CAUSE OF ACTION

Common Law Trademark Infringement

74. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as if set forth herein.

75. The acts and omissions of Defendants, as set forth above, constitute common law trademark infringement.

76. Defendants, through the acts and omissions described above, have used, or are imminently about to use, in commerce words, terms, names, symbols, and devices which are confusingly similar to those of Plaintiff, in a manner that is likely to cause confusion or mistake or to deceive consumers as to the affiliation, connection, or association of Defendants with Plaintiff, and/or as to the origin, sponsorship, or approval of Defendants’ goods.

77. As a result of Defendants’ conduct, confusion is likely to occur both when consumers are making their purchasing decisions, as well as post-sale.

86. In performing the acts and omissions herein alleged, Defendants are guilty of intentional, oppressive, malicious, reckless and despicable conduct directed to Plaintiff in conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover punitive damages from Defendants in an amount subject to proof.

Unjust Enrichment

88. As a result of the illegal and wrongful conduct alleged hereinabove, Defendants have been and will be unjustly enriched at the expense of Plaintiff.

89. Defendants should be required to disgorge and return to Plaintiff the gain that Defendants wrongfully obtained at the expense of Plaintiff, and a constructive trust should be imposed thereon, in an amount to be proven at trial.

Unfair Business Practices – Cal. Bus. & Prof. Code § 17200

90. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as if set forth herein.

91. Defendants have committed acts of illegal and unfair business practices, as defined by Business and Professions Code Section 17200 et seq., by engaging in, among other unfair practices, deceptive representations in violation of Business and Professions Code § 17500, and violations of state and federal trademark and unfair competition statutes.

92. These acts and practices violate Business and Professions Code Section 17200 in that they are illegal, unfair and/or fraudulent business practices.

93. The unlawful, unfair and/or fraudulent business practices as described above, present a continuing threat to members of the public in that Plaintiff and members of the general public have no other adequate remedy at law to halt and remedy said practices and/or policy.

94. As a direct and proximate result of the aforementioned acts, Defendants received and continue to hold ill-gotten gains resulting from their unfair business practices, which properly belong to Plaintiff. Plaintiff, accordingly, seeks restitution of all such gains.

PRAYER

Plaintiff prays for relief as follows:

1. For the First Cause of Action: damages according to proof at trial, including but not limited to Plaintiff's actual damages, the Defendants' profits, and enhanced damages pursuant to 15 U.S.C. § 1117(a); an order pursuant to 15 U.S.C. § 1116 temporarily, preliminarily, and permanently enjoining Defendants, and all of their related and affiliated entities, and each of their principals, servants, officers, directors, partners, agents, representatives, shareholders, employees, affiliates, successors, and assignees, and all others acting in privity, concert, or participation with them, from (1) using Plaintiff's SOURCE Marks, or any of them, or any confusingly similar mark, including, without limitation any of the OPEN SOURCE Marks or TRU SOURCE Marks, or (2) assisting, aiding, or abetting any person in engaging or performing any of the acts in (1); an order of destruction of infringing goods pursuant to 15 U.S.C. § 1118; costs and attorneys' fees pursuant to 15 U.S.C. § 1117(a); and such other and further legal and equitable relief as the Court deems just and proper.

2. For the Second Cause of Action: damages according to proof at trial, including but not limited to Plaintiff's actual damages, the Defendants' profits, and enhanced damages pursuant to 15 U.S.C. § 1117(a); an order pursuant to 15 U.S.C. § 1116 temporarily, preliminarily, and permanently enjoining Defendants, and all of

1 their related and affiliated entities, and each of their principals, servants, officers,
 2 directors, partners, agents, representatives, shareholders, employees, affiliates,
 3 successors, and assignees, and all others acting in privity, concert, or participation
 4 with them, from (1) using Plaintiff's SOURCE Marks, or any of them, or any
 5 confusingly similar mark, including, without limitation any of the OPEN SOURCE
 6 Marks or TRU SOURCE Marks, or (2) assisting, aiding, or abetting any person in
 7 engaging or performing any of the acts in (1); an order of destruction of infringing
 8 goods pursuant to 15 U.S.C. § 1118; for costs and attorneys' fees pursuant to 15
 9 U.S.C. §1117(a); and such other and further legal and equitable relief as the Court
 10 deems just and proper.

11 3. For the Third Cause of Action: Plaintiff's actual damages, the GNIL's
 12 profits, and enhanced damages pursuant to 15 U.S.C. § 1117(a), or statutory damages
 13 of at least \$100,000, according to proof at trial; prejudgment interest; costs of suit;
 14 attorneys' fees; an order directing Defendant GNIL to transfer the Domain Name to
 15 Plaintiff, and temporarily, preliminarily, and permanently enjoining Defendant GNIL,
 16 and all of its related and affiliated entities, and each of its and their principals,
 17 servants, officers, directors, partners, agents, representatives, shareholders,
 18 employees, affiliates, successors, and assignees, and all others acting in privity,
 19 concert, or participation with them, from (1) using Plaintiff's SOURCE Marks, or any
 20 of them, or any confusingly similar mark, including, without limitation any of the
 21 OPEN SOURCE Marks or TRU SOURCE Marks, or (2) assisting, aiding, or abetting
 22 any person in engaging or performing any of the acts in (1); and such other and
 23 further legal and equitable relief as the Court deems just and proper;

24 4. For the Fourth Cause of Action: damages according to proof at trial;
 25 disgorgement of Defendants' profits; punitive damages; prejudgment interest; costs
 26 of suit; attorneys' fees; an order temporarily, preliminarily, and permanently
 27 enjoining Defendants, and all of their related and affiliated entities, and each of their
 28 principals, servants, officers, directors, partners, agents, representatives, shareholders,

1 employees, affiliates, successors, and assignees, and all others acting in privity,
 2 concert, or participation with them, from (1) using Plaintiff's SOURCE Marks, or any
 3 of them, or any confusingly similar mark, including, without limitation any of the
 4 OPEN SOURCE Marks or TRU SOURCE Marks, or (2) assisting, aiding, or abetting
 5 any person in engaging or performing any of the acts in (1); and such other and
 6 further legal and equitable relief as the Court deems just and proper;

7 5. For the Fifth Cause of Action: damages according to proof at trial;
 8 disgorgement of Defendants' profits; punitive damages; prejudgment interest; costs
 9 of suit; attorneys' fees; an order temporarily, preliminarily, and permanently
 10 enjoining Defendants, and all of their related and affiliated entities, and each of their
 11 principals, servants, officers, directors, partners, agents, representatives, shareholders,
 12 employees, affiliates, successors, and assignees, and all others acting in privity,
 13 concert, or participation with them, from (1) using Plaintiff's SOURCE Marks, or any
 14 of them, or any confusingly similar mark, including, without limitation any of the
 15 OPEN SOURCE Marks or TRU SOURCE Marks, or (2) assisting, aiding, or abetting
 16 any person in engaging or performing any of the acts in (1); and such other and
 17 further legal and equitable relief as the Court deems just and proper;

18 6. For the Sixth Cause of Action: an accounting of all profits derived by
 19 Defendants as a result of their unlawful conduct; disgorgement of all such wrongfully
 20 obtained profits; costs of suit; attorneys' fees; an order temporarily, preliminarily, and
 21 permanently enjoining Defendants, and all of their related and affiliated entities, and
 22 each of their principals, servants, officers, directors, partners, agents, representatives,
 23 shareholders, employees, affiliates, successors, and assignees, and all others acting in
 24 privity, concert, or participation with them, from (1) using Plaintiff's SOURCE
 25 Marks, or any of them, or any confusingly similar mark, including, without limitation
 26 any of the OPEN SOURCE Marks or TRU SOURCE Marks, or (2) assisting, aiding,
 27 or abetting any person in engaging or performing any of the acts in (1); and such
 28 other and further legal and equitable relief as the Court deems just and proper;

JMBM
Jeffer Mangels
Butler & Mitchell LLP

7. For the Seventh Cause of Action: an accounting of all profits derived by Defendants as a result of their unlawful conduct; disgorgement of all such wrongfully obtained profits; costs of suit; attorneys' fees; an order temporarily, preliminarily, and permanently enjoining Defendants, and all of their related and affiliated entities, and each of their principals, servants, officers, directors, partners, agents, representatives, shareholders, employees, affiliates, successors, and assignees, and all others acting in privity, concert, or participation with them, from (1) using Plaintiff's SOURCE Marks, or any of them, or any confusingly similar mark, including, without limitation any of the OPEN SOURCE Marks or TRU SOURCE Marks, or (2) assisting, aiding, or abetting any person in engaging or performing any of the acts in (1); and such other and further legal and equitable relief as the Court deems just and proper.

DATED: February 23, 2016

JEFFER MANGELS BUTLER & MITCHELL LLP
ROD S. BERMAN
JESSICA BROMALL SPARKMAN
NATHANIEL DANG

By: /s/ ROD S. BERMAN
ROD S. BERMAN
Attorneys for Plaintiff THRESHOLD
ENTERPRISES, LTD.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury of all issues which may be tried to a jury.

DATED: February 23, 2016

JEFFER MANGELS BUTLER & MITCHELL LLP
ROD S. BERMAN
JESSICA BROMALL SPARKMAN
NATHANIEL DANG

By: /s/ ROD S. BERMAN

ROD S. BERMAN
Attorneys for Plaintiff THRESHOLD
ENTERPRISES, LTD.

JMBM
Jeffer Mangels
Butler & Mitchell LLP

CERTIFICATE OF SERVICE

It is hereby certified that on **March 2, 2016**, a copy of the foregoing THRESHOLD'S MOTION TO SUSPEND PROCEEDINGS PENDING RESOLUTION OF DISTRICT COURT ACTION has been sent by first class mail, postage prepaid, to Applicant at the correspondence address of record in the Patent and Trademark Office:

Buchanan Ingersoll & Rooney, PC
Bassam N. Ibrahim
1737 King Street, Suite 500
Alexandria, Virginia 22314

/s/ JESSICA BROMALL SPARKMAN